



**The Comptroller General
of the United States**

Washington, D.C. 20548

Jackson

Decision

Matter of: Office of Technology Assessment - Authority for
Incentive Awards Program

File: B-228963

Date: May 19, 1988

DIGEST

The Director of the Office of Technology Assessment (OTA) does not have the authority to establish an incentive awards program for the Office. Absent specific authority or inclusion of OTA within the scope of the Incentive Awards Act, 5 U.S.C. chapter 45 (1982), OTA may not pay incentive awards to its employees. The authority to "fix the compensation" of its employees does not include the authority to make incentive awards. 37 Comp. Gen. 343 (1957), distinguished.

DECISION

The Office of Technology Assessment (OTA) has requested our opinion as to whether its Director has authority under the Technology Assessment Act of 1972, Public Law 92-484, 86 Stat. 797, October 13, 1972, codified at 2 U.S.C. §§ 471-481 (1982), to establish an incentive awards program for OTA. For the reasons stated below, we find that the Director of OTA does not have authority to establish an incentive awards program.

BACKGROUND

The OTA has asked whether the authority of its Director to "fix the compensation of such personnel as may be necessary to carry out the provisions of the Act" includes the authority to establish an incentive awards program, to be financed by funds appropriated for the compensation of OTA employees. 2 U.S.C. § 475(f) (1982). The OTA notes that there is no specific provision in OTA's enabling act that either precludes or provides for establishment of an incentive awards program.

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The OTA refers to our decision in 37 Comp. Gen. 343 (1957) as support for the authority of its Director to establish an incentive awards program. In that case, the Assistant Secretary of the Army requested our decision to clarify whether the Secretary of the Army could establish an incentive awards program for the full-time civilian (non-federal) employees of the Army National Guard. In that decision we held that awards under such a program may reasonably be considered as an element of compensation. The OTA states that the statutory language cited in this decision parallels the language authorizing the OTA Director to fix compensation for OTA personnel, so that its Director should also have the authority to establish an incentive awards program.

OPINION

The Incentive Awards Act authorizes an agency to pay a cash award to an employee who "by his suggestion, invention, superior accomplishment, or other personal effort contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in paperwork," or performs a special act or service in the public interest related to his official employment. 5 U.S.C. § 4503. However, OTA is not within the coverage of the act as an "agency."

The act defines the term "agency" as an executive agency and certain other named non-executive agencies. 5 U.S.C. § 4501(1)(B). The OTA, an independent agency within the legislative branch, is not specifically included in this statutory definition of "agency" and, therefore, is not authorized to establish an incentive awards program under this authority.

By contrast, other agencies in the legislative branch--the Government Printing Office, Library of Congress, Architect of the Capitol, Botanic Gardens and our Office--are specifically included in the definition of an "agency" under this act. See 5 U.S.C. § 4501 (1982). These agencies have different statutory authorities for the compensation of their employees; several, like OTA, have broad general authority to fix the compensation of their employees. See, e.g., 44 U.S.C. § 305 (1982). Notwithstanding these broad authorities, Congress has provided specific statutory authority for these agencies to have incentive awards programs. We think that this specific authorization is best read as meaning that the broad authority of OTA to fix the compensation of its employees does not include the authority

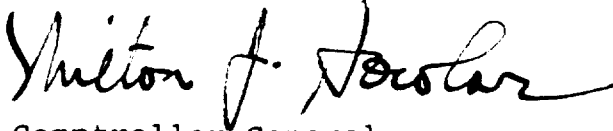
to establish an incentive awards program. In the absence of specific authority, such a program may not be implemented. See U.S. Sentencing Commission, B-227781, Sept. 11, 1987, 66 Comp. Gen. ____.

Finally, OTA argues that it has the same statutory authority we held the Army possessed in 37 Comp. Gen. 343, supra. We note that OTA has broad authority to "fix the compensation" of its personnel (see 2 U.S.C. § 475(f) (1982)), and that language is similar to the language we considered in 37 Comp. Gen. 343, supra. However, our prior decision is distinguishable from the present case on several grounds.

Our prior decision addressed the authority of the Secretary of the Army to fix the compensation and determine the elements of compensation for persons who were not federal employees. In contrast to our prior decision in 37 Comp. Gen. 343, supra, we note that while OTA has broad authority to "fix the compensation" of its employees, OTA employees are federal employees. The authority to fix their compensation, while not subject to the provisions of title 5, United States Code, is limited by the laws and regulations governing the appointment and compensation of congressional staff employees in title 2, United States Code. Interpretation of the Technology Assessment Act, B-177806, Mar. 20, 1987. Next, we note that several of the elements of compensation cited in 37 Comp. Gen. 343 are benefits which have been accorded federal employees only through specific statutory entitlement (pay for holidays, annual and sick leave, and lump-sum payment for leave). See 5 U.S.C. §§ 6103, 6301-6312, 5551 (1982).^{1/} Finally, we note that the entitlement of federal employees to any pay, allowances, or benefits must be derived from specific statutory authority. See Kizas v. Webster, 707 F.2d 524 (D.C. Cir. 1983), cert. denied, 464 U.S. 1042 (1984).

^{1/} In prior decisions we authorized pay for holidays, vacation and sick leave, lump-sum payment for unused leave, and payment for social security for these non-federal Army employees. See 33 Comp. Gen. 128 (1953); 30 Comp. Gen. 166 (1950); 27 Comp. Dec. 344 (1920).

Therefore, we conclude that, in the absence of specific authority or inclusion in the Incentive Awards Act, the Director of OTA is not authorized to establish an incentive awards program for OTA employees.

A handwritten signature in black ink, reading "Milton J. Fowler". The signature is written in a cursive style with a large, stylized "M" and "F".

Acting Comptroller General
of the United States